

Message Text

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ACTION ACDA-10

INFO OCT-01 IO-13 ISO-00 ACDE-00 SSO-00 NSCE-00 USIE-00

INRE-00 CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 IOE-00

EB-08 NRC-05 OES-06 FEA-01 /083 W

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FM USMISSION IAEA VIENNA

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ACDA FOR DAVIES, GRAHAM; ERDA FOR DUFF/ISA, BRUSH/OGC; GENEVA FOR
BUCHHEIM

E.O. 11652: N/A (DECONTROL DECEMBER 31, 1977)

TAGS: IAEA, PARM, TECH

SUBJECT: IAEA AD HOC ADVISORY GROUP ON NUCLEAR EXPLOSIONS FOR
IEACEFUL

PURPOSES: TEXT OF GOV/COM.23/21 FOR PLENARY

REF: (A) IAEA VIENNA 3112, (B) IAEA VIENNA 3165, (C) STATE 90640

(D) STATE 85721

1. U.S. REP SUBMITTED ON 18 APRIL A REDRAFT TEXT REPORTED
REF A OF MATERIAL ORIGINALLY CONTAINED IN GOV/COM.
23/14 AND 17; THE U.S. REDRAFT WAS DESIGNATED
PROVISIONAL GOV/COM. 23/21, AND WAS ACCEPTED BY THE COMMITTEE
AS THE NEW BASIS FOR DISCUSSION OF VARIOUS ALTERNATIVES.
PROVISIONAL 23/21 HAS UNDERGONE EXTENSIVE REDRAFTING IN
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WORKING PARTY; THE CURRENT DRAFT DIFFERS FROM THE DRAFT
REPORTED REFTEL IN WAYS DESCRIBED IN FOLLOWING PARAS.

2. AS REPORTED REF B AND ACCEPTED REF C, TITLE OF 23/21
CHANGED TO READ: "SOME ALTERNATIVE INTERNATIONAL LEGAL
INSTRUMENTS FOR PROVIDING NUCLEAR EXPLOSIVES FOR PEACEFUL
PURPOSE IN ACCORDANCE WITH THE TREATY ON THE NON-PROLIFERATION

OF NUCLEAR WEAPONS AND THE 1975 NPT REVIEW CONFERENCE FINAL
DECLARATION."

3. ALTERNATIVES A, B AND C WERE REDESIGNATED ALTERNATIVES II,
I AND III, RESPECTIVELY. REDESIGNATION OF ALT B AS ALT I
WAS DONE AT INSISTENCE OF REPS FROM MEXICO, CZECHOSLOVAKIA,
FRG AND OTHERS WHO STRESSED THEIR SUPPORT OF THE "UMBRELLA"
AGREEMENT AS THE PREFERRED ALTERNATIVE, THOUGH THEIR PREFERENCE
IS NOT STATED IN THE TEXT.

4. TEXT DESCRIBING EACH OF THE THREE ALTERNATIVES UNDERWENT
EXTENSIVE DISCUSSION AND REDRAFTING. IN VIEW OF US REPS.
REDRAFTED TEXT AS QUOTED PARA 5 BELOW ESSENTIALLY UNCHANGED IN
SUBSTANCE. ACCORDINGLY, WE EXPECT TO JOIN IN CONSENSUS
ACCEPTANCE ON AD REFERENDUM BASIS OF REDRAFT WHEN COMMITTEE
NEXT MEETS IN PLENARY SESSION.

5. WORKING PARTY DRAFT OF PROVISIONAL 23/21 IS AS FOLLOWS:
BEGIN QUOTE:

I. AN INTERNATIONAL MULTILATERAL AGREEMENT
("UMBRELLA" AGREEMENT) ESTABLISHING BINDING
PRINCIPLES AND PROCEDURES, ANNEXING A MODEL
PROJECT AGREEMENT AND FORESEEING SEPARATE
PROJECT AGREEMENTS

1. UNDER THIS APPROACH IT IS ENVISAGED THAT STATES WOULD CONCLUDE
A COMPREHENSIVE MULTILATERAL AGREEMENT WHICH WOULD BE BINDING ON STAT
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PRARTIES TO IT. SUCH AN AGREEMENT WOULD BE OPEN TO ALL STATES WHETHER
OR NOT THEY ARE MEMBERS OF THE AGENCY AND WHETHER OR NOT THEY ARE
PARTIES TO NPT. IT WOULD CONTAIN COMPREHENSIVE PROVISIONS COVERING
ALL THE RELEVANT SUBJECT MATTER AS SUGGESTED IN ANNEX II TO DOCUMENT
GOV/COM.23/13/REV.1. IT WOULD ALSO INCORPORATE THE "APPROPRIATE INTER
-
NATIONAL PROCEDURES" MENTIONED IN ARTICLE V OF THE NPT AS DEVELOPED B
Y
THE AGENCY, WOULD DESIGNATE THE AGENCY AS THE "APPROPRIATE INTERNATIO
NAL
BODY" REFERRED TO IN THAT ARTICLE AND DEFINE ITS ROLE, AND WOULD ADD-
ITIONALLY PROVIDE FOR AGENCY OBSERVATION IN ACCORDANCE WITH DOCUMENT
INFCIRC/169. MOROVER, IT WOULD, IF ITS PROVISIONS WERE INDEED COMPR-
EHENSIVE, APPEAR TO BE IN FULL CONFORMITY WITH THE CONCEPT OF A
"SPECIAL INTERNATIONAL AGREEMENT" REFERRED TO IN ARTICLE V OF NPT.

2. IN ORDER TO FACILITATE UNIVERSAL ACCEPTANCE IT IS THOUGH THAT
THE PROVISIONS OF AN UMBRELLA AGREEMENT NEED NOT BE VERY DETAILED;
RATHER, THEY SHOULD ESTABLISH PRINCIPLES WHICH SHOULD FORM THE LEGAL

FRAMEWORK FOR THE DETAILED PROVISIONS TO BE NEGOTIATED BY THE PARTIES TO INDIVIDUAL PROJECT AGREEMENTS. IN THIS CONNECTION, IT IS SUGGESTED THAT THERE COULD BE ANNEXED TO THE UMBRELLA AGREEMENT A MODEL PROJECT THAT THERE COULD BE ANNEXED TO THE UMBRELLA AGREEMENT A MODEL PROJECT AGREEMENT WHICH WOULD ASSIST IN THE NEGOTIATION OF INDIVIDUAL PROJECT AGREEMENTS. SUCH AGREEMENTS MIGHT THEMSELVES BE SPECIFICALLY FORESEEN IN THE UMBRELLA AGREEMENT.

3. AN UMBRELLA AGREEMENT WOULD CONTRIBUTE TO UNIFORMITY IN MAKING AVAILABLE INTERNATIONAL PNE SERVICES UNDER THE SAME BINDING PROVISIONS REGARDING SUCH MATTERS AS HEALTH AND SAFETY, LIABILITY, CONSULTATION WITH THIRD STATES, PRIVILEGES AND IMMUNITIES FOR PERSONNEL FROM THE SUPPLIER STATE AND FOR AGENCY OBSERVERS WHILE PRESENT IN THE PROJECT COUNTRY. IF THE AGREEMENT WERE WIDELY RATIFIED AND PROVED TO BE WORKABLE, STATES WISHING TO AVAIL THEMSELVES OF SERVICES INVOLVING LIMITED OFFICIAL USE

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NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES WOULD THEREBY BE ENCOURAGED TO BECOME PARTIES TO THE AGREEMENT. A MODEL PROJECT AGREEMENT ANNEXED TO THE UMBRELLA AGREEMENT, ALTHOUGH NOT BINDING STATES TO ITS DETAILED TERMS, COULD BE GIVEN A DEFINED STATUS WHICH WOULD BE USEFUL FOR GUIDING THE AGENCY AND OTHER PARTIES TOWARD ACHIEVING UNIFORM AND GENERALLY ACCEPTABLE INDIVIDUAL PROJECT AGREEMENTS. THE NEGOTIATION OF A COMPREHENSIVE MULTILATERAL AGREEMENT COULD BE A LENGTHY PROCESS,

PARTICULARLY IN THE ABSENCE OF PRACTICAL EXPERIENCE WITH INTERNATIONAL PNE PROJECTS. PERIODIC REVIEWS OF THE AGREEMENT WITH A VIEW TO ASSURING THAT ITS PURPOSES AND PROVISIONS ARE BEING REALIZED WOULD BE NECESSARY. SUCH REVIEWS SHOULD TAKE INTO ACCOUNT ANY TECHNOLOGICAL DEVELOPMENTS RELEVANT TO THE FIELD OF THE PEACEFUL APPLICATION OF NUCLEAR EXPLOSIONS

II. GENERAL PRINCIPLES ESTABLISHED WITHIN THE AGENCY

4. UNDER THIS APPROACH, IT IS ENVISAGED THAT THE AGENCY, IN CONSULTATION AS NECESSARY WITH MEMBER STATES. AND OTHER INTERESTED STATES, COULD DRAW UP A COMPREHENSIVE LIST OF GENERAL PRINCIPLES WHICH SHOULD GOVERN SERVICES FOR NUCLEAR EXPLOSIVES FOR PEACEFUL PURPOSES, MODELLED UPON, BUT NOT NECESSARILY LIMITED TO, THE PRINCIPLES AND MATTERS SET OUT IN ANNEX II OF DOCUMENT GOV/COM.23/13/REV.1. THIS LIST OF GENERAL PRINCIPLES WOULD NOT BE EMBODIED IN AN AGREEMENT BINDING UNDER INTERNATIONAL LAW, BUT WOULD FORM THE BASIS OF ALL PNE PROJECT AGREEMENTS TO WHICH THE AGENCY BECAME

A PARTY. IT WOULD BE SUBMITTED FOR APPROVAL BY THE BOARD OF GOVERNORS AND CONTAINED IN A DOCUMENT ANALOGOUS, FOR EXAMPLE, TO INFCIRC /153(CORRECTED) OR THE CODES OF PRACTICE IN THE AGENCY'S SAFETY SERIES. UNDER THIS APPROACH, AGREEMENTS TO WHICH THE AGENCY WAS A PARTY WOULD REQUIRE THE APPROVAL OF THE BOARD OF GOVERNORS AND LIMITED OFFICIAL USE

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SHOULD THUS CONFORM TO THOSE GENERAL PRINCIPLES, RELEVANT TO THE PARTICULAR AGREEMENT APPROVED BY THE BOARD. STATES CARRYING OUT PROJECTS UNDER THE BILATERAL AGREEMENTS REFERRED TO IN ARTICLE V OF THE NPT WOULD NOT BE BOUND TO ADHERE TO THESE PRINCIPLES OTHER THAN THOSE CONVERGED BY TREATY OBLIGATIONS OF THE STATES INVOLVED. IN ADDITION, AS A FURTHER DERIVATIVE OF THIS ALTERNATIVE, THERE COULD BE ANNEXED TO THE GENERAL PRINCIPLES A MODEL PROJECT AGREEMENT WHICH COULD FORM THE BASIS FOR THE NEGOTIATION OF AN ACTUAL PROJECT AGREEMENT BETWEEN THE AGENCY AND STATES INTERESTED IN PROCEEDING WITH A PROJECT. THE ARRANGEMENTS FOR AGENCY OBSERVATION IN ACCORDANCE WITH DOCUMENT INFCIRC/169 WOULD BE EITHER INCLUDED IN THE PROJECT AGREEMENT OR MADE THE SUBJECT OF A SEPARATE "OBSERVATION AGREEMENT".

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ACTION ACDA-10

INFO OCT-01 IO-13 ISO-00 ACDE-00 SSO-00 NSCE-00 USIE-00
INRE-00 CIAE-00 INR-07 L-03 NSAE-00 NSC-05 EB-08
NRC-05 OES-06 DODE-00 PM-04 H-01 PA-01 PRS-01
SP-02 SS-15 IOE-00 FEA-01 /083 W
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5. THE NEGOTIATION OF SUCH GENERAL PRINCIPLES WOULD BE A REASONABLY STRAIGHTFORWARD MATTER. MOREOVER, UNDER THIS APPROACH STATES COULD ADTOT DIFFERING PROCEDURES CONSISTENT WITH THESE PRINCIPLES AND DEVELOPMENTS ARISING OUT OF PRACTICAL EXPERIENCE COULD BE READILY ACCOMMODATED. CONSIDERATION COULD BE GIVEN TO INVITING STATES NOT MEMBERS OF THE AGENCY BUT PARTIES TO THE NPT TO PARTICIPATE IN THE DRAWING UP OF PRINCIPLES. THE CONCLUSION OF AGREEMENTS BY PARTICIPANT STATES AND THE AGENCY IN ACCORDANCE WITH GENERAL PRINCIPLES MODELLED UPON ANNEX II OF DOCUMENT GOV/COM.23/13 AND ADOPTED BY THE AGENCY, WOULD APPEAR TO BE IN FULL CONFORMITY WITH THE CONCEPT OF "SPECIAL INTERNATIONAL AGREEMENTS" REFERRED TO IN ARTICLE V OF NPT. IN THE NEGOTIATION OF BILATERAL ARRANGEMENTS STATES INTERESTED IN PROCEEDING WITH A PROJECT WOULD NOT BE BOUND, STRICTLY AS A MATTER OF LAW, TO THE ACCEPTANCE OR REJECTION OF ANY PARTICULAR GENERAL PRINCIPLE. THE ARRANGEMENTS AND PROCEDURES MIGHT NOT LIMITED OFFICIAL USE

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BE THE SAME FOR ALL NON-NUCLEAR-WEAPON STATES. DEVIATIONS FROM THE PRINCIPLES OTHER THAN THOSE COVERED BY TREATY OBLIGATIONS COULD BE INCORPORATED ONLY IN PROJECT AGREEMENTS NOT INVOLVING THE AGENCY.

III. BILATERAL MASTER AGREEMENTS BETWEEN THE AGENCY AND INDIVIDUAL SUPPLIER NUCLEAR WEAPON STATES OR CONSULTANT STATES AND SEPARATE AGREEMENTS FOR PROJECTS TAKING ACCOUNT OF AGENCY DEVELOPED GUIDELINES

6. UNDER THIS APPROACH IT IS ENVISAGED THAT INDIVIDUAL SUPPLIER NUCLEAR WEAPON STATES WOULD CONCLUDE BILATERAL MASTER AGREEMENTS WITH THE AGENCY. THE PROVISIONS WHICH WOULD CONFORM TO THE CONTENTS OF A DOCUMENT DRAWN UP BY THE AGENCY IN CONSULTATION WITH MEMBER STATES AND MODELLED ON, BUT NOT NECESSARILY LIMITED TO, THE PRINCIPLES AND MATTERS IN ANNEX II OF GOV/COM.23/13/REV.1. IN THE MASTER AGREEMENT THE STATE WOULD UNDERTAKE TO BE BOUND BY ITS PROVISIONS IN ALL PROJECTS IN WHICH IT PARTICIPATED INVOLVING PEACEFUL APPLICATIONS OF NUCLEAR EXPLOSIONS IN NON NUCLEAR WEAPON STATES. THIS UNDERTAKING COULD BE EXTENDED TO PROJECTS CARRIED OUT THROUGH THE BILATERAL ARRANGEMENTS PROVIDED FOR IN ARTICLE V OF THE NPT, OR OTHERWISE, IN WHICH THE AGENCY WAS NOT INVOLVED EXCEPT TO PROVIDE INTERNATIONAL OBSERVATION.

7. THIS APPROACH COULD ALSO PROVIDE FOR INDIVIDUAL CONSULTANT STATES TO FORMALIZE WITH THE AGENCY THEIR INVOLVEMENT IN INTERNATIONAL ARRANGEMENTS FOR PROJECTS INVOLVING PEACEFUL APPLICATIONS OF NUCLEAR EXPLOSIONS, THROUGH MASTER AGREEMENTS SIMILAR

TO THOSE WITH SUPPLIER NUCLEAR-WEAPON STATES, BUT OMITTING FEATURES CONCERNED SOLELY WITH THE SUPPLY OF NUCLEAR EXPLOSION RELATED SERVICES OR OTHERWISE LIMITED TO PARTICULAR SERVICES.

8. THE AGENCY WOULD REFER REQUESTS FOR ASSISTANCE ONLY TO STATES THAT HAVE CONCLUDED A MASTER AGREEMENT. MOREOVER, THE AGENCY COULD DECLINE INVOLVEMENT, EXCEPT FOR INTERNATIONAL OBSERVATION, IN ANY PROJECT IN WHICH PARTICIPATING SUPPLIER OR CONSULTING LIMITED OFFICIAL USE

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STATES HAD NOT CONCLUDED A MASTER AGREEMENT.

9. THE PARTICIPATION OF SUPPLIER NUCLEAR WEAPON STATES OR CONSULTANT STATES IN THE AGREEMENTS FOR A PROJECT WOULD BE IN ACCORD WITH THEIR MASTER AGREEMENT WITH THE AGENCY. THE BOARD OF GOVERNORS SHOULD BE FURNISHED WITH A COPY OF ALL AGREEMENTS RELEVANT TO THE UNDERTAKINGS IN THE MASTER AGREEMENT. IT IS ENVISAGED THAT THE AGREEMENTS FOR A PROJECT WOULD ALSO APPLY, OR TAKE INTO ACCOUNT, BOARD OF GOVERNORS APPROVED GUIDELINES OR CODES OF PRACTICE DEVELOPED BY THE AGENCY IN EACH OF VARIOUS SPECIALIZED AREAS, IN A FORM AND BY METHODS APPROPRIATE TO THE SUBJECT AND THE INTERESTS OF STATES. EXAMPLES OF SUCH SUBJECTS ARE TECHNICAL AND ECONOMIC EVALUATION, AGENCY OBSERVATION, HEALTH AND SAFETY ASPECTS OF PROJECT EXECUTION, CONTENT OF AGREEMENTS FOR PROJECTS AND THE RIGHTS OF THIRD PARTIES. ACCEPTANCE OF SUCH GUIDELINES OR CODES WOULD BE MANDATORY IN THE AGREEMENTS FOR THOSE ASPECTS OF A PROJECT TO WHICH THE AGENCY WAS A PARTY. IT IS ANTICIPATED THAT WHEN CONCLUDED, MASTER AGREEMENTS MIGHT ALSO GIVE RECOGNITION TO RELEVANT CODES OR GUIDELINES EXISTING AT THE TIME AND FORSEE THE POSSIBLE RECOGNITION OF THOSE SUBSEQUENTLY DEVELOPED.

10. UNDER THIS APPROACH THE NEGOTIATION OF EACH MASTER AGREEMENT SHOULD BE RELATIVELY STRAIGHTFORWARD AND THE DEVELOPMENT AND IMPLEMENTATION OF GUIDELINES OR CODES OF PRACTICE COULD BE PHASED WITH PROJECT REQUIREMENTS AND ACCUMULATED EXPERIENCE. CONSISTENT WITH ITS LEGAL OBLIGATIONS EACH INTERESTED STATE COULD NEGOTIATE A MASTER AGREEMENT AT ITS OWN DISCRETION. STATES PARTY TO THE NPT, AS WELL AS MEMBERS OF THE AGENCY, COULD BE INVITED TO PARTICIPATE IN THE FORMULATION OF THE PRINCIPLES AND THE GUIDELINES OR CODES AND COULD SEEK SERVICES BUT NON-MEMBERS OF THE AGENCY WOULD NOT HAVE A ROLE IN APPROVING GUIDELINES AND CODES IN THE AGENCY.

(IV) MEMORANDUM OF UNDERSTANDING.

11. UNDER THIS APPROACH, THE PRINCIPLES WHICH SHOULD GOVERN PNE PROJECT SERVICES MODELLED UPON, BUT NOT NECESSARILY LIMITED TO THE LIMITED OFFICIAL USE

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PRINCIPLES AND MATTERS SET OUT IN ANNEX II OF DOCUMENT GOV/COM.23/13
COULD BE EMBODIED IN A MEMORANDUM OF UNDERSTANDING TO WHICH
STATES WOULD BECOME PARTIES.

THIS MEMORANDUM WOULD NOT CREATE RIGHTS AND OBLIGATIONS BINDING
UNDER INTERNATIONAL LAW, BUT WOULD BE OPERATING ON A GOOD FAITH
BASIS.

THE PRINCIPLES OF THE MEMORANDUM WOULD CONTEMPLATE THE CONCLUSION OF
INDIVIDUAL PROJECT AGREEMENTS BETWEEN SUPPLIER, RECIPIENT AND
CONSULTANT STATES.

THE MEMORANDUM WOULD BE A FLEXIBLE INSTRUMENT WHILE CONSTITUTING
A RATHER STRONG AND FORMAL FRAMEWORK. SUCH A MEMORANDUM, WHILE
ENCOURAGING THE UNIFORM DEVELOPMENT OF PNE SERVICES, WOULD NOT
GARANTEE IT.

THE MEMORANDUM WOULD BE COMPLEMENTED BY "CODES OF PRACTICE"
TO BE DEVELOPED BY THE AGENCY TO PROVIDE THE FOLLOWING BASIC
GUIDELINES:

- TECHNICAL GUIDELINES IN EACH SPECIALIZED AREA (I.E. TECHNICAL
AND ECONOMIC EVALUATION, HEALTH AND SAFETY ASPECTS, AGENCY
OBSERVATION, HEALTH AND SAFETY REQUIREMENTS IN PROJECTS
EXECUTION);
- GUIDELINES FOR THE CONTENT OF PROJECT AGREEMENTS;
- GUIDELINES FOR THE RIGHTS OF THIRD PARTIES.

6. IN ADDITION TO ABOVE TEXT, A FINAL PARAGRAPH MAY BE
ADOPTED BY WORKING PARTY ON APRIL 26. PROPOSALS HAVE
BEEN MADE FOR SEVERAL METHODS OF DEALING WITH
"VARIANTS" PROBLEM (PARA ELEVEN OF DOC. 23/21 AS REVISED
APRIL 18). ONE SUCH PROPOSAL (BY UK) IS TO DELETE
DISCUSSION THIS POINT AND U.S. REPS INTEND TO ACQUIESCE
DELETION IN ACCORDANCE WITH REFTEL D PARA SEVEN C,
IF WORKING PARTY SO DESIRES.STONE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
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Concepts: TEXT, MEETING AGENDA, AMENDMENTS, COMMITTEE MEETINGS, PEACEFUL NUCLEAR EXPLOSIONS
Control Number: n/a
Copy: SINGLE
Sent Date: 26-Apr-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
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